



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Cleta Mitchell, Esq.
Foley & Lardner LLP
Washington Harbour
3000 K Street, NW, Suite 500
Washington, DC 20007-5143

JUN 6 2007

RE: MUR 5610
Dole North Carolina Victory Committee, Inc.
and Mike Mitchell, in his official capacity
as treasurer

Dear Ms. Mitchell:

On June 1, 2007, the Federal Election Commission ("Commission") accepted the signed conciliation agreement submitted on behalf of the Dole North Carolina Victory Committee, Inc. and Mike Mitchell, in his official capacity as treasurer ("Committee") in settlement of the Committee's violations of 2 U.S.C. §§ 432(c)(5), 434(b)(4)(H)(v) and (6)(B)(v), and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to the Committee.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the effective date of the conciliation agreement. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Ana J. Peña-Wallace".

Ana J. Peña-Wallace
Attorney

Enclosure
Conciliation Agreement

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

4) MUR 5610

5 Dole North Carolina Victory Committee, Inc.)
6 and Mike Mitchell, in his official capacity as)
7 treasurer)
8

9
10 **CONCILIATION AGREEMENT**

11 This matter was generated based on information ascertained by the Federal Election
12 Commission ("the Commission") in the normal course of carrying out its supervisory
13 responsibilities. *See* 2 U.S.C. § 437g(a)(2). Based upon available information, the Commission
14 found reason to believe the Dole North Carolina Victory Committee, Inc. and Mike Mitchell, in
15 his official capacity as treasurer, ("Respondent" or "Committee"), violated 2 U.S.C.
16 §§ 432(c)(5), (h)(1), 434(b)(4)(H)(v), (6)(B)(v), and 441b(a).¹
17

18 NOW, THEREFORE, the Commission and Respondent, having participated in informal
19 methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as
20 follows:

21 I. The Commission has jurisdiction over Respondent and the subject matter of this
22 proceeding, and this agreement has the effect of an agreement entered into pursuant to 2 U.S.C.
23 § 437g(a)(4)(A)(i).

24 II. Respondent has had a reasonable opportunity to demonstrate that no action should
25 be taken in this matter.

26 III. Respondent enters voluntarily into this agreement with the Commission.

27 IV. The pertinent facts in this matter are as follows:

¹ The facts that are the subject of this matter occurred both prior to and after the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA") Pub L No 107-55, 116 Stat 81 (2002) All statements of the law that

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COUNSEL
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Background

1. The Dole North Carolina Victory Committee was a joint fundraising committee that raised funds for two participating political committees, the Dole 2002 Committee, Inc. and the North Carolina Republican Party.

2. At all relevant times, Earl Allen Haywood was Assistant Treasurer for the Committee and the sole paid consultant of the Committee.

Law

3. The Act requires a committee treasurer to keep an account of the name, address, date, amount and purpose of all disbursements made by the committee and to keep copies of receipt invoices or cancelled checks for all disbursements that exceed \$200. 2 U.S.C. § 432(c)(5). The Act requires a treasurer to file reports with the Commission that disclose such information and that report the total amount of committee disbursements. 2 U.S.C. §§ 434(b)(4)(H)(v) and (6)(B)(v). The Act requires all political committees to file complete and accurate reports with the Commission. 2 U.S.C. § 434; 11 C.F.R. pt. 104.

4. It is unlawful for any candidate, political committee, or other person knowingly to accept or receive any contribution from a corporation. 2 U.S.C. § 441b(a). Further, once a political committee encounters a possible prohibited corporate contribution among the contributions received, the contribution must either be refunded or deposited into the committee's campaign bank account within 10 days of the treasurer's receipt while the treasurer determines whether it is permissible. 11 C.F.R. § 103.3(b)(1). Commission regulations also require the treasurer to make at least one written or oral request for evidence of legality and if not

able to determine the legality of the contribution, refund the questionable contribution within 30 days of receipt. *Id*

Facts

5. Haywood was hired by the Committee to perform its compliance functions, including maintaining the Committee's financial and bank records, filing reports with the Commission, and reattributing/redesignating funds. He was responsible for processing and depositing contributions, making disbursements, maintaining the bank account, completing disclosure forms, signing reports and filing them with the Commission. The Committee Treasurer was an unpaid volunteer, and therefore all treasurer duties were undertaken by Haywood as Assistant Treasurer, who had expertise in FEC compliance. Haywood performed all of the treasurer's duties on his behalf at all times and had actual authority to deposit contributions into the Committee's bank account, make and track disbursements, and prepare disclosure reports

6. Haywood wrote Committee checks payable to himself over a period from June 2002 through May 2003, and embezzled approximately \$155,750 in Committee funds. Haywood failed to keep proper records of disbursements he made to himself and failed to file accurate reports with the Commission disclosing such information

7. Haywood ultimately pled guilty to one count of Mail Fraud, a felony offense, and Aiding and Abetting in violation of 18 U.S.C. §§ 2 and 1341, in connection with this activity, was sentenced to 18 months in prison and did serve 14 months in prison and two months in a halfway house, was sentenced to a period of probation supervision, and was ordered to pay restitution to the Committee.

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1 8. The Committee on its own conducted an internal investigation that
2 uncovered Haywood's embezzlement and upon discovery of Haywood's criminal activities, the
3 Committee, at the direction of Sen. Elizabeth Dole and the Committee Treasurer, reported it to
4 law enforcement authorities, including the U.S. Attorney, the Federal Bureau of Investigation
5 and the Department of Justice, and assisted in the government's criminal prosecution of
6 Haywood.

7 9. Respondent contends that no one associated with the Committee or with
8 the participating committees, including specifically Sen. Elizabeth Dole and the Committee
9 Treasurer, knew of, suspected or condoned the theft of Committee funds or any of the FEC
10 violations committed by Haywood in the act of embezzling and hiding such embezzlement from
11 the Committee and the FEC. The Commission has no information to the contrary.

12 10. As a result of Haywood's actions, the Committee filed incomplete and
13 inaccurate reports with the Commission. The Committee was required to deposit contributions
14 into its campaign bank account, keep track of all receipts and disbursements, and disclose them
15 in reports to the Commission. However, as a result of Haywood's actions, the Committee failed
16 to fulfill all of those requirements. Thirty-seven disbursements to Haywood from the Committee
17 bank account during 2002 through 2003 were unreported, totaling \$128,250.

18 11. The Committee's written procedures, which established supervision of
19 Haywood and segregated duties, were not followed, thus enabling Haywood to embezzle the
20 Committee's funds and violate the Commission's disclosure requirements. Thus, Haywood was
21 permitted to act without any internal controls or supervision. Specifically, instead of following
22 the original plan of separating the receipt and deposit of contributions from the disbursement of
23 funds as outlined in the Committee's procedures, Haywood was allowed to gain control of the

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1 contributions for processing, depositing, and reporting. Haywood was also responsible for
2 making all disbursements, managing the bank account and preparing and filing of the
3 Committee's FEC reports. The fact that Haywood's conduct was illegal and that the treasurer
4 and the participating committees were unaware of his conduct does not vitiate the Committee's
5 violations; as a result of the actions of its Assistant Treasurer, Earl Allen Haywood, the
6 Committee failed to comply with the Act. The Committee is ultimately responsible for
7 complying with the Act.

8 12. In addition, the Committee received corporate contributions that were ultimately
9 deposited by Haywood into the Committee's bank account in violation of the Act and the
10 Committee's joint fundraising agreement. Many of the corporate checks appear to be payable to
11 another joint fundraising committee that was permitted during the 2002 election cycle to receive
12 corporate contributions. Since it discovered the corporate checks in 2003, the Committee has
13 neither refunded those checks nor transferred proceeds to any other committees, including the
14 Participants, neither of which received any of the impermissible corporate funds. The
15 Committee contends that Haywood disbursed some or all of the proceeds of the corporate checks
16 to himself and that the Committee has not recovered such funds.

17 V. Respondent violated 2 U.S.C. §§ 432(c)(5), 434(b)(4)(H)(v) and (6)(B)(v), and
18 441b(a), by failing to keep an account of all disbursements to Earl Allen Haywood, by failing to
19 timely report those disbursements, and by accepting corporate contributions.

20 VI. 1. Respondent will pay a civil penalty to the Federal Election Commission in
21 the amount of Twenty Thousand Dollars (\$20,000), pursuant to 2 U.S.C. § 437g(a)(5)(B). In
22 considering the appropriate civil penalty and remedies in this matter, the Commission considered
23 the Committee's financial condition and also found significant mitigation when determining the

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1 civil penalty for the reporting and recordkeeping violations, including that Earl Allen Haywood
2 misappropriated Committee funds, that when the Committee's internal audit discovered the
3 violations the Committee took steps to involve federal law enforcement authorities, that it
4 provided Commission staff with relevant information about the violations of the Act, and that it
5 amended its reports. However, the civil penalty also reflects Respondent's violation of 2 U.S.C.
6 § 441b resulting from Haywood's deposit of corporate funds into the Committee's bank account
7 and the Respondent's failure to refund the prohibited corporate contributions.

8 2. Respondent will cease and desist from violating the Act.

9 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
10 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
11 with this agreement. If the Commission believes that this agreement or any requirement thereof
12 has been violated, it may institute a civil action for relief in the United States District Court for
13 the District of Columbia.

14 VIII. This agreement shall become effective as of the date that all parties hereto have
15 executed same and the Commission has approved the entire agreement.


16 IX. Respondent shall have no more than 30 days from the date this agreement
17 becomes effective to comply with and implement the requirement contained in this agreement
18 and to so notify the Commission.

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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

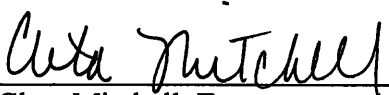
FOR THE COMMISSION:

Thomasenia P. Duncan
General Counsel

BY: 
Ann Marie Terzaken
Acting Associate General Counsel
for Enforcement

6/6/07
Date

FOR THE RESPONDENT:

BY: 
Cleta Mitchell, Esq.
Counsel for Respondent

May 21, 2007
Date

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